IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID RAY PHILLIPS, Plaintiff, v. WILLIAM Z. WOOD, JR., MICHAEL E. HELMS, MICHAEL C. CAIN, KEN GRAYBEAL, RICHIE DOUGLAS HOLBROOK, AND OTHER UNKNOWN ACTORS, Defendants.	)	1:04CV00297

MEMORANDUM OPINION

BEATY, District Judge.

Plaintiff David Ray Phillips ("Plaintiff") brings this action for alleged violations of his civil rights under the First, Fourth, Fifth, Sixth and Eighth Amendments to the Constitution of the United States in connection with his July 26, 2002, arrest and subsequent judicial proceedings arising from that arrest. The suit was filed against two Superior Court Judges, a State Police Trooper, the Sheriff of Yadkin County and a Yadkin County Magistrate.

The Court has previously dismissed the claims against Defendants Wood, Helms and Graybeal by Memorandum and Judgment entered on October 27, 2004 [Document #29, 30]. This case is currently before the Court on a Motion to Dismiss [Document #14] by North Carolina State Trooper Richie Douglas Holbrook ("Trooper Holbrook" or "Defendant Holbrook") and a Motion to Dismiss [Document #25] by Yadkin County Sheriff Michael C. Cain ("Sheriff Cain" or "Defendant Cain") pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, Trooper Holbrook's Motion will be granted, Sheriff Cain's Motion will be granted, and this case will be dismissed in its entirety.

I. FACTUAL BACKGROUND

On July 26, 2000, Trooper Holbrook initiated a traffic stop of Plaintiff's vehicle after Plaintiff made an illegal U-turn at a roadblock/checkpoint. Trooper Holbrook approached Plaintiff's vehicle, and Plaintiff rolled down his window slightly. Plaintiff failed to provide his driver's license when requested by Trooper Holbrook, and instead provided Trooper Holbrook with a card that purported to invoke his Fifth Amendment rights. After engaging in some debate with Plaintiff, Trooper Holbrook then allegedly told Plaintiff to roll down his window and provide his license or "I am going to smash your window out and take it from you." Complaint ¶ 21. Plaintiff still did not provide his license, and Trooper Holbrook allegedly brandished his night stick and told Plaintiff to get out of his vehicle. Trooper Holbrook placed Plaintiff under arrest and performed a search incident to the arrest. Trooper Holbrook found a firearm in Plaintiff's vehicle and charged Plaintiff with careless and reckless driving, failure to exhibit his license, and carrying a concealed weapon. Trooper Holbrook transported Plaintiff to the Yadkin County Jail, and while in Trooper Holbrook's vehicle, Plaintiff allegedly complained that his handcuffs were too tight. According to Plaintiff, Trooper Holbrook informed Plaintiff that he had put them on in accordance with his training and would not loosen them.

Plaintiff was brought before a Magistrate for Yadkin County, North Carolina, who set bond at $2,500.00, which Plaintiff posted. Plaintiff was ultimately convicted, after a jury trial on April 3, 2001, for failure to display a license. He appealed and also filed a Motion for Appropriate Relief ("MAR"). That conviction was affirmed and an appeal therefrom to the North Carolina Supreme Court was dismissed on November 21, 2002. State v. Phillips, 152 N.C. App. 679, 568 S.E.2d 300, appeal dismissed, 356 N.C. 442, 573 S.E.2d 162 (2002).

Plaintiff alleges that Trooper Holbrook deprived Plaintiff of his rights by unlawfully stopping Plaintiff's vehicle, using excessive force or threats of excessive force when Plaintiff failed to produce his driver's license, and falsely arresting Plaintiff without a warrant. As to Sheriff Cain, Plaintiff alleges that on December 6, 2002, he "surrendered" himself to Sheriff Cain to serve the sentence imposed by Superior Court Judge William Z. Wood, all the while protesting the illegality of his sentence and presenting Sheriff Cain with a copy of his MAR. Sheriff Cain, according to Plaintiff, stated that "he would only do what the judge ordered even if it were an unlawful order." Complaint ¶ 58. Plaintiff alleges that he was handcuffed, placed in custody, and taken before a Magistrate who rejected Plaintiff's argument that his sentence was unlawful. He was thereafter incarcerated in the Yadkin County Jail.

Sheriff Cain and Trooper Holbrook have each moved to dismiss the claims against them pursuant to Rule 12(b)(6). At the outset, the Court notes that Plaintiff has not filed a response to either motion. Local Rule 7.3(k) provides that a failure to file a response to a motion within twenty (20) days shall constitute a waiver of such response except upon a showing of excusable neglect. In addition, the Rule provides that a motion to which no response has been filed may be considered as uncontested and ordinarily granted without further notice. In this case, the Clerk's Office specifically advised Plaintiff of the need to respond to these motions, but Plaintiff has still failed to respond in any manner. Therefore, Defendants' motions could be granted on that basis alone. However, even if the Court considers the substance of Plaintiff's claims, the claims are nevertheless subject to dismissal pursuant to Rule 12(b)(6), as discussed below.

II. MOTION TO DISMISS UNDER RULE 12

A. Standard of Review

When reviewing a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted, a court must view the complaint in the light most favorable to the plaintiff, accepting as true all well-pleaded allegations. Randall v. United States, 30 F.3d 518, 522 (4th Cir. 1994). However, the Court is "not so bound by the plaintiff's legal conclusions, since the purpose of Rule 12(b)(6) is to test the legal sufficiency of the complaint." Id. "[I]f as a matter of law 'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations,' a claim must be dismissed." Neitzke v. Williams, 490 U.S. 319, 326–27, 109 S. Ct. 1827, 1832, 104 L. Ed. 2d 338 (1989) (citation omitted) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232, 81 L. Ed. 2d 59 (1984)).

B. Motion to Dismiss Claims As to Trooper Holbrook

Trooper Holbrook contends that Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6) because Plaintiff fails to base his claim on anything more than conclusory allegations that Trooper Holbrook violated Plaintiff's constitutional rights by arresting and imprisoning him. With respect to the stop of Plaintiff's vehicle, the Fourth Circuit has held that police officers may stop vehicles that commit a traffic infraction in an effort to avoid a roadblock or checkpoint. See United States v. Scheetz, 293 F.3d 175, 182-84 (4th Cir. 2002); see also United States v. Smith, 396 F.3d 579, 585 (4th Cir. 2005) (holding that "when law enforcement officers observe conduct suggesting that a driver is attempting to evade a police roadblock--such as unsafe or erratic driving or behavior indicating the driver is trying to hide from officers--police may take that behavior into account in determining whether there is reasonable suspicion to stop the vehicle and investigate the situation

further"). During a routine traffic stop, the officer "may request a driver's license and vehicle registration, run a computer check, and issue a citation." United States v. Rusher, 966 F.2d 868, 876-77 (4th Cir. 1992) (citations omitted). In addition, "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." Ohio v. Robinette, 519 U.S. 33, 38-39, 117 S. Ct. 417, 421, 136 L. Ed. 2d 347 (1996) (citation omitted). Based on these cases, the Court concludes that Trooper Holbrook clearly had sufficient basis to initiate the traffic stop of Plaintiff's vehicle and require him to provide his driver's license.

Furthermore, once Plaintiff failed to provide his driver's license, Trooper Holbrook clearly had probable cause to arrest him. To establish a Fourth Amendment violation for false arrest, a plaintiff must show that the officer arrested him or her without probable cause. Brown v. Gilmore, 278 F.3d 362, 367 (4th Cir. 2002). "To prove an absence of probable cause, [the plaintiff] must allege a set of facts which made it unjustifiable for a reasonable officer to conclude that [plaintiff] was violating [the law.]" Id. at 368. In this case, Plaintiff has not alleged any facts to show he was arrested without probable cause. Cf. Simpson v. Welch, 900 F.2d 33 (4th Cir. 1990)(allegations in a complaint are insufficient to state a claim if they are mere conclusory allegations and do not contain factual allegations to support the claims made). Although the complaint contains words and phrases such as "false arrest," "excessive force," "due process," "right to equal protection," etc., "[t]he presence . . . of a few conclusory legal terms does not insulate a complaint from dismissal under Rule 12(b)(6) when the facts alleged in the complaint cannot support a finding" of a constitutional violation. Young v. City of Mt. Ranier, 238 F.3d 567, 577 (4th Cir. 2001). Here, Plaintiff was convicted in district court of failure to produce his license in violation of North

Carolina General Statute § 20-29 (2001), and of making a reckless U-turn in violation of North Carolina General Statute § 20-140(b) (2001). After Plaintiff appealed the district court ruling, a jury in criminal superior court convicted the Plaintiff of failure to produce his license. Clearly there is no issue as to whether there was probable cause since Plaintiff was ultimately convicted of failing to produce a license, and that conviction was upheld on appeal. For the reasons stated, Plaintiff has not stated factual allegations sufficient to state a claim for false arrest in violation of his constitutional rights.

Plaintiff has also failed to state a claim for excessive force in violation of his constitutional rights. First, the Supreme Court has long recognized that "an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989). In Foote v. Dunagan, the Fourth Circuit held that an officer's attempt to grab an individual's car keys and pull him from his truck after he refused to provide the requested identification was a reasonable "measured attempt to effectuate a lawful Terry stop." Foote v. Dunagan, 33 F.3d 445, 448-49 (4th Cir. 1994). Based on this authority, Trooper Holbrook's alleged threats to effectuate the stop after Plaintiff failed to provide his driver's license, even if proved, would not state a Fourth Amendment violation. Finally, with respect to the handcuffs, Plaintiff's complaint that his handcuffs were too tight during the brief ride to the jail does not state a Fourth Amendment violation. See, e.g., Brown, 278 F.3d at 369 ("[A] standard procedure such as handcuffing would rarely constitute excessive force where the officers were justified, as here, in effecting the underlying arrest."); Carter v. Morris, 164 F.3d 215, 219 n.3 (4th Cir. 1999); Foster v. Metropolitan Airports Comm'n, 914 F.2d 1076 (8th Cir. 1990); Cooper v. City of Virginia Beach, 817 F. Supp. 1310 (E.D. Va. 1993).

Thus, as to all of the allegations against Trooper Holbrook, the Court concludes that Plaintiff has failed to state a claim against Trooper Holbrook upon which relief could be granted.[1] Therefore, Trooper Holbrook's Motion to Dismiss Pursuant to Rule 12(b)(6) [Document #14] will be granted, and all of Plaintiff's claims against Trooper Holbrook will be dismissed.

C. Motion to Dismiss Claims As to Sheriff Cain

Sheriff Cain likewise contends that Plaintiff's claims should be dismissed for failure to state a claim pursuant to Rule 12(b)(6). Sheriff Cain contends that Plaintiff's allegations demonstrate that Sheriff Cain obeyed the orders of the Superior Court Judge and Magistrate who sentenced the Plaintiff. According to Plaintiff, Plaintiff surrendered himself into the custody of Sheriff Cain, was taken before a Magistrate, and was thereafter incarcerated. Plaintiff does not contend that Sheriff Cain disobeyed, disregarded, or exceeded any of the judicial orders, nor does Plaintiff contend that Sheriff Cain used excessive force. The Plaintiff alleges nothing more than that Sheriff Cain obeyed the orders of the court.

It is well established that officials performing orders issued by a court are provided immunity when they do nothing other than perform such orders. See, e.g., Ravenscroft v. Casey, 139 F.2d 776, 778 (2d Cir. 1944) (dismissing claim against sheriff and jail authorities who placed and kept the plaintiff in jail on order of the judge because "[w]hether [the judge's] orders were correct or erroneous he had jurisdiction to make them and they provide immunity to the jail authorities who did nothing other than perform them"); Mays v. Sudderth, 97 F.3d 107, 113 (5th Cir. 1996) ("[A]n official acting within the scope of his authority is absolutely immune from a suit for damages to the

[1] Because the Court finds that Plaintiff has failed to state any constitutional violations, the Court need not reach the immunity arguments raised by Trooper Holbrook.

extent that the cause of action arises from his compliance with a facially valid judicial order issued by a court acting within its jurisdiction."); Valdez v. City and County of Denver, 878 F.2d 1285, 1288 (10th Cir. 1989) ("Absolute immunity for officials assigned to carry out a judge's orders is necessary to insure that such officials can perform their function without the need to secure permanent legal counsel. A lesser degree of immunity could impair the judicial process."); Roland v. Phillips, 19 F.3d 552, 556 (11th Cir. 1994) ("[L]aw enforcement personnel, acting in furtherance of their official duties and relying on a facially valid court order, are entitled to absolute quasi-judicial immunity from suit in a section 1983 action."). The Fourth Circuit has long recognized that a defense or an immunity exists as a matter of law for "all public officers who act in obedience to a judicial order or under the court's direction." McCray v. Maryland, 456 F.2d 1, 5 (4th Cir. 1972). "Since judges are immune from suit for their decisions, it would be manifestly unfair to hold liable the ministerial officers who merely carry out that judicial will." Id. n.11.

In the present case, there is simply nothing in the Complaint to even hint that Sheriff Cain did not perform his lawful duties. Under these circumstances, the actions by Sheriff Cain as described in the Complaint were indeed ministerial and did not involve discretionary decision-making. Sheriff Cain did not arrest Plaintiff; he simply accepted him into custody, afforded Plaintiff the judicial safeguard of presenting him to a Magistrate, and thereafter housed him as a prisoner. Sheriff Cain's actions were lawful and are protected by the immunity described above. Plaintiff has therefore failed to state a claim against Sheriff Cain upon which relief could be granted, and Sheriff Cain's Motion to Dismiss [Document #25] will be granted.

III. CONCLUSIONS

For the reasons set forth above, Defendant Holbrook's Motion to Dismiss Pursuant to Rule 12(b)(6) [Document #14] will be GRANTED, and Plaintiff's claims against Defendant Holbrook will be dismissed. Defendant Cain's Motion to Dismiss Pursuant to Rule 12(b)(6) [Document #25] will also be GRANTED, and Plaintiff's claims against Defendant Cain will be dismissed. As a result of this ruling, there are no claims that remain, and this case is therefore DISMISSED in its entirety.

This, the 12 day of April, 2005.

United States District Judge